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CORRECTIVE ACTION

*Conf. # 2007/03021*

**BEFORE THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL**

ORDER GRANTING PETITION FOR REVIEW OF  
TWENTY-TWO APPEAL COMMENTS AND  
DENYING REVIEW OF OTHER APPEAL  
COMMENTS IN DECISION FOR INDUSTRIAL  
SERVICE OIL COMPANY, INC.,  
U.S. EPA ID No. CAD 099 542 708

Order No. HWCA 06/07-P002

**I. INTRODUCTION**

Communities for a Better Environment and California Communities Against  
Toxics (collectively, "CBE") submits this brief pursuant to California Department of Toxic  
Substances Control ("DTSC") Order Number HWCA 06/07-P002 ("Order") issued June 29,  
2007, granting a petition for review of the final permit ("Permit") decision for the Industrial  
Service Oil Company, Inc. ("ISOCI") treatment, storage and recycling facility located at 1700  
South Soto Street, Los Angeles, California. In its Order, DTSC granted review on the following  
contentions made by CBE: (1) railcar storage of 250,000 gallons of hazardous waste for up to a  
year is unsafe; (2) the complex, possibly outdated, Waste Analysis Plan ("WAP") fails to (a)  
ensure proper training of employees implementing the plan; (b) provide specific testing  
procedures and frequency of fingerprint testing; (c) appropriately limit the maximum  
concentration of polychlorinated biphenyls ("PCBs") in the wastes being handled, or (d) specify  
that post-commingling testing of PCBs must cease; (3) the Permit must include additional  
conditions to ensure that bulk waste received at the facility is tested for reactivity; (4) the Permit  
should require more frequent testing for received wastes that are potentially reactive; (5) the  
permit fails to adequately describe the truck loading/unloading and storage areas and the activities

1 to be conducted therein; (6) the Permit must include additional conditions specifying that ISOCI  
2 will evaluate waste compatibility and group wastes according to this evaluation; (7) the Permit  
3 must include additional provisions describing how staging will take place; (8) the Permit should  
4 impose more frequent storage tank assessments; (9) the closure plan is deficient because (a)  
5 closure cost estimates are not based on the same assumptions relied upon in the closure plan and  
6 (b) the list of facilities that will accept wastes remaining on site after closure is incomplete; and  
7 (10) the Permit should include provisions requiring that ISOCI comply with applicable  
8 pretreatment standards established by the Clean Water Act.

## 9 **II. STATEMENT OF REASONS**

10 CBE submitted comments to DTSC on ISOCI's Draft Standardized Hazardous  
11 Waste Permit and Environmental Impact Report on February 13, 2006 and April 14, 2006, and  
12 submitted a petition for review of the Final Standardized Hazardous Waste Permit on March 5,  
13 2007.<sup>1</sup> In all instances, CBE expressed the same concerns – that DTSC had seriously mishandled  
14 the public participation process for this permit action, that the permit conditions failed to guard  
15 against the risks posed by the radical expansion of a waste handling business operated by a “high  
16 priority violator” of hazardous waste management laws, that the Permit allowed for  
17 unprecedented storage practices that jeopardize the health and safety of surrounding communities,  
18 and that the Environmental Impact Report (“EIR”) and the Health Risk Assessment (“HRA”) did  
19 not adequately evaluate the impacts and risks of the proposed project.

20 DTSC granted review on some of CBE's comments and denied review of others.  
21 Although CBE disagrees with DTSC's characterization of many of its comments as being outside  
22 of DTSC's jurisdiction or more properly handled in another forum, CBE recognizes that the  
23 review granted was limited in scope to the twenty comments identified in the Order. CBE  
24 authored sixteen of those comments, which point out several ways in which the Permit fails to  
25 ensure that ISOCI can and will safely manage a radically expanded storage, treatment, and  
26 recycling facility. Stronger and more specific permit conditions are needed to address the issues

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28 <sup>1</sup> Both CCAT and CBE submitted comments on April 14, 2006 and March 5, 2007. Only CBE  
submitted comments on February 13, 2006.

1 raised in those comments.

2 ISOCI also filed an appeal through EP Consultants (“EPC”). EPC’s  
3 recommendations propose to further weaken the conditions that already fail to adequately protect  
4 the health and safety of the surrounding community. EPC proposes that DTSC require less  
5 rigorous PCB testing and waste profile analysis, significantly reduce the closure cost estimate,  
6 and remove provisions that tie the facility permit to the local land use permit that ISOCI must  
7 obtain but has not even applied for yet. EPC’s comments regarding closure cost estimates and  
8 conditions precedent in the Permit are founded on erroneous legal interpretations by lay  
9 consultants and for this reason, these proposals should be rejected. CBE requests that DTSC  
10 reject EPC’s comments.

11 Unless otherwise noted, CBE incorporates by reference all comments and appeal  
12 arguments previously submitted in support of CBE’s position in these proceedings. CBE adds the  
13 following points and reasons to the arguments previously raised.

14 A. Condition allowing ISOCI to store up to 250,000 gallons of hazardous waste in rail  
15 cars is unprecedented and unsafe

16 ISOCI appears to have proposed to use rail cars for long-term storage of hazardous  
17 waste to avoid the more stringent requirements that apply to storage tanks. Specifically, storage  
18 tank regulations require frequent integrity assessments performed by a professional engineer  
19 registered in California. Cal. Code Regs. (“CCR”) tit. 22, § 66264.192(i). The Permit would  
20 allow ISOCI to evade these regulations. DTSC has a responsibility to uphold the laws and  
21 regulations designed to protect California residents and communities from hazardous waste  
22 releases from long term, large volume storage containers.

23 The rail car storage conditions in ISOCI’s permit fail to even comply with the less-  
24 stringent containment standards for containers. *See* CCR 22 § 66260.10 (defining rail cars as  
25 “bulk storage containers”). Container storage areas must include a containment system that  
26 consists of, among other things, an underlying base “sufficiently impervious to contain leaks,  
27 spills, and accumulated precipitation *until the collected material is detected and removed.*” *Id.* §  
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1 66264.175(b)(1) (emphasis added). Implicit in this requirement is that the base will be sufficient  
2 to contain a spill. The shallow, narrow spill pans that ISOCI proposed are inadequate to contain a  
3 spill both in terms of pan size and in the volume of liquid that the pan can “contain”. Moreover,  
4 the pans would not “underlie” a rail car if one were to tip over—a reasonably foreseeable  
5 possibility in earthquake-prone Southern California. *See* Attach. A (photograph of partially  
6 tipped train in the aftermath of the July 16, 2007 earthquake in Japan).

7 Furthermore, ISOCI must provide a “base” that can contain spills and accumulated  
8 precipitation until the collected material is detected and removed. The regulations state that the  
9 entire containment system, which can consist of features “designed and operated to drain” liquids  
10 from the base must have “sufficient capacity to contain precipitation from at least a 24-hour, 25-  
11 year storm plus 10% of the aggregate volume of all containers or the volume of the largest  
12 container, whichever is greater.” CCR 22 § 66264.175(b)(2)-(3). The Permit does not fulfill this  
13 requirement (even assuming that the pumps work perfectly and the rate of the spill does not  
14 exceed the flow of waste that would result from leaving the valve at the base of a rail car open,  
15 which one should not). The two *separate*, 125 inch wide, 6 inch deep spill pans that underlie five  
16 25,000 gallon railcars each are 278 and 289 feet long. These pans can accommodate 11,562 and  
17 12,020 gallons of liquid, respectively. This capacity undeniably falls short of the volume of one  
18 rail car, without even considering the volume of precipitation from a 24-hour, 25-year storm  
19 (estimated by DTSC to be 27,495 gallons). Based on this volume, CBE’s expectation that a  
20 railcar spill would quickly overwhelm the proposed containment system is not unreasonable.

21 DTSC bases its conclusion that the containment system has adequate capacity on  
22 the fact that the tank (Tank 800) is designed to accept spilled waste and precipitation pumped  
23 from the spill pans has a 55,748-gallon capacity. However, the capacity of the final destination  
24 for spilled waste is immaterial if the system used to convey released materials lacks a similar  
25 capacity. The spill pans, which are capable of accepting (roughly) a mere 12,000 gallons of  
26 waste, are the limiting factor in ISOCI’s proposed containment system.

27 DTSC also places significant trust in the assumption that the four inch drain pipes  
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1 leading from the pans to a below grade sump and two pumps capable of channeling 230 gallons  
2 per minute into Tank 800 will work without incident to timely remove the contents of a spill. In  
3 administering the federal hazardous waste management program, however, the U.S.  
4 Environmental Protection Agency ("EPA") has expressed "strong concerns about using  
5 operational controls, e.g., pumps, as a means of achieving complete secondary containment . . . ."  
6 Letter from Sylvia K. Lowrance, Director, Office of Solid Waste, to Al Patton, Environmental  
7 Specialist, C-K Associates, Inc. (Nov. 30, 1989) (hereinafter "Lowrance Letter") (Attach. B).  
8 EPA encourages the use of passive barriers, capable of holding "100% of the volume of the  
9 largest hazardous waste tank within its boundary" unless space considerations make such  
10 structures infeasible. *Id.* If and when an active, mechanical system is justified, EPA requires that  
11 the system have additional "protective measures, such as back up power availability and  
12 redundant pumps." *Id.*

13           ISOCI's proposal does not have "redundant" means for moving waste from the  
14 collection areas to Tank 800. The two pumps are part of the primary system, not a back-up plan.  
15 Moreover, no measures are proposed to account for clogs in the four inch drain pipes. While the  
16 containment regulations may not, as DTSC pointed out in its response to comments, prohibit the  
17 use of pumps, they do require that the system be capable of removing waste in the "collection  
18 area in as timely a manner as is necessary to prevent overflow of the collection system." CCR 22  
19 § 66264.175(b)(5). The system that ISOCI proposed does not provide a reliable means for  
20 accomplishing this requirement. *Cf.* Lowrance Letter at 3 (noting that a barrier is "the most  
21 reliable and fail-safe means of protecting the environmental from hazardous waste spills").

22           In sum, ISOCI's proposed railcar containment system is inadequate because the  
23 spill basin (spill pans) will not underlie an overturned railcar and can accommodate less than half  
24 of the volume of one railcar. To successfully prevent overflow in the event of a spill, the released  
25 materials will need to drain through a four inch pipe at a rate faster than the rate of release. The  
26 system completely lacks redundant draining options, which increases the likelihood that the spill  
27 will overwhelm the small spill basin, in violation of the regulations. More is required at this  
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1 facility to protect human health, safety, and the environment.

2 B. ISOCI must amend its WAP to address several shortcomings

3 ISOCI's entire Part B Permit application, clearly cobbled together over many years  
4 and the result of a disjointed process, remains disorganized, confusing and internally inconsistent.  
5 Although DTSC did not grant review based on this comment, it speaks to an overarching problem  
6 with ISOCI's Permit as proposed that is particularly evident in the WAP, which ISOCI submitted  
7 as part of its application. Significantly, DTSC did grant review on several comments questioning  
8 specific provisions of the WAP.

9 1. The WAP does not describe specific testing procedures and frequency of  
10 fingerprint testing

11 The current WAP describes a fingerprint sampling and testing protocol for  
12 incoming hazardous wastes that will not ensure that the facility meets its permit restrictions on  
13 acceptance of reactive hazardous wastes, or to ensure that incompatible wastes are stored properly  
14 and safely. Many hazardous waste disposal facilities perform random sampling before accepting  
15 wastes to ensure that they do not mistakenly accept wastes they are not authorized to handle or  
16 commingle incompatible wastes. This approach also serves to keep generators honest regarding  
17 their waste characterizations. *See EPA, Waste Analysis Requirements in Incoming Waste*  
18 *Shipments - LDR* (OSWER Directive 9551.1987(10) June 12, 1987). Rather than adopt  
19 procedures for a storage and treatment facility that handles a variety of hazardous wastes,  
20 however, ISOCI's WAP merely proposes to implement the fingerprint testing protocol that  
21 facilities dealing only with used oil use. These procedures are simply not adequate to protect the  
22 health of the surrounding community in light of the significantly expanded list of waste codes that  
23 ISOCI proposes to accept and operations that ISOCI proposes to conduct.

24 Specifically, the WAP indicates that ISOCI will determine whether a received  
25 hazardous waste exhibits the characteristic of reactivity or contains dioxins solely based on the  
26 waste profile information that the generators of the hazardous waste supply. ISOCI will take one  
27 sample from each bulk shipment of hazardous waste, and from 10% of all containerized  
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1 hazardous wastes, for fingerprinting. The fingerprinting analysis as described in the WAP will  
2 only test for flashpoint, specific gravity, total halogens, pH, basic sediment & water, and  
3 “compatibility.” These testing procedures will not screen for reactivity or other unacceptable  
4 characteristics. (See discussion of dioxins in Part K below.) Further, the WAP does not indicate  
5 what type of analysis, if any, will be performed to determine compatibility.

6           These limited investigations are inadequate to ensure the health and safety of  
7 workers and the surrounding community. Without some confirmatory chemical analysis, ISOCI,  
8 which will be accepting hundreds of new RCRA wastes for the first time under this Permit, might  
9 accidentally accept hazardous wastes that are reactive or incompatible with other hazardous  
10 wastes at the facility. To guard against this, ISOCI should be required to perform a  
11 comprehensive chemical analysis on all of the the fingerprint samples that are taken from  
12 incoming bulk and containerized hazardous wastes. Additionally, the chemical analysis  
13 performed should, at a minimum, cover the parameters described for a “Waste Profile” (under  
14 “Testing Parameters” in Table III-4 of the WAP). These parameters include analysis for the  
15 characteristic of reactivity and testing for compatibility.

16           2. The WAP potentially does not ensure proper training of employees  
17           implementing the plan

18           Even though the current WAP only contemplates one form of very basic on-site  
19 testing (the fingerprint analyses described above), the Training Syllabus in Appendix J of the Part  
20 B application, which provides for basic training of personnel in the chemistry of hazardous wastes  
21 appears to be insufficient. California Code of Regulations title 22, § 66270.14(b)(12) requires  
22 that applicants submit the following to DTSC as part of the Part B permit application: “[a]n  
23 outline of both the introductory and continuing training programs by owners or operators to  
24 prepare persons to operate or maintain the hazardous waste management facility in a safe manner  
25 as required to demonstrate compliance with section 66264.16.” Additionally, facilities must  
26 provide “[a] brief description of how training will be designed to meet actual job tasks in  
27 accordance with requirements in section 66264.16(a)(3).” *Id.* However, the cover page for the  
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1 Training Syllabus states that “[t]he attached is an *example* of the format and content that may be  
2 used by the ISOCI facility,” suggesting that the training program provided is not the actual  
3 training program for the ISOCI employees. ISOCI has thus failed to provide the required outline.

4 If DTSC imposes the additional testing requirements described in Part II.B.1,  
5 which might create an incentive for ISOCI to perform additional fingerprint sample analyses in-  
6 house at their facility, it must first set up a proper on-site laboratory, staffed with properly trained  
7 analytical chemist personnel, to ensure that the additional analyses will be properly performed  
8 and follow the necessary quality assurance/quality control procedures. The training program  
9 presented to DTSC for such an operation would need to be much more thorough and demanding  
10 than the program that ISOCI currently uses. Alternatively, ISOCI could outsource the testing to  
11 an off-site facility.

12 3. The WAP does not appropriately limit the maximum concentration of PCBs in  
13 the wastes being handled

14 As proposed, the WAP is unclear regarding how and when ISOCI will analyze  
15 incoming shipments of used oil and other hazardous wastes for PCBs. For example, it does not  
16 consistently describe the various PCB concentration levels that would cause an incoming waste to  
17 be managed in a specific manner. Furthermore, it permits reliance on inferior testing tools  
18 (immunoassay-based test kits). To address these shortcomings, DTSC must revise the WAP to  
19 include a detailed discussion of the various PCB concentration limits for used oils and hazardous  
20 wastes which will be blended into hazardous waste fuels. This discussion should also include a  
21 description of how often and by what means used oils and other hazardous wastes will be  
22 analyzed for PCBs, and what type of management will be triggered when a specific level of PCBs  
23 is detected in a waste stream. DTSC’s prior revisions have not gone far enough to address the  
24 identified problems.

25 The WAP does not fully describe what ISOCI can and cannot do with wastes  
26 containing PCBs in various concentrations. The WAP fails to even identify the statutorily  
27 relevant levels of PCBs—let alone the different treatment options for wastes with particular  
28



1 concentrations of PCBs. For example, the “Parameter/Specification” column in Table III-3 of the  
2 WAP states for PCBs: “Specification: >2ppm for used oil, oil/water separator sludge, and  
3 unspecified used oil containing waste.” The structure of this parameter is confusing for two  
4 reasons. First, it is not designed to identify wastes that qualify as recycled oil, which by  
5 definition have a PCB concentration of *less than* 2ppm. Cal. Health & Safety Code § 25250.1.  
6 Second, this parameter/specification does not include any upper limit concentration for PCBs,  
7 which limits its usefulness as a parameter.

8           In response to CBE’s earlier comments on this issue, DTSC added Special  
9 Condition 2.r. to the Permit. This condition clarifies that, “[w]astes that contain polychlorinated  
10 biphenyls (PCBs) with concentration between 5<sup>2</sup> to 49 parts per million shall only be managed at  
11 the Fuel Blending Unit. The facility shall not accept any waste containing PCBs with  
12 concentration of 50 ppm or greater.” However, the Permit is silent on how ISOCI will manage  
13 used oil that contains PCBs at concentrations from 2 ppm to 5 ppm. Based on the previous  
14 paragraph, one can extrapolate that the WAP does not address wastes with a PCB concentration  
15 of 2-5 ppm. To fill these gaps, DTSC should require that ISOCI amend the WAP to apprise  
16 personnel implementing it of the various PCB levels, and their meaning for the specific  
17 management of a particular used oil or other hazardous waste shipment containing PCBs.

18           Additionally, DTSC must amend Special Condition 2.r. to require fingerprint PCB  
19 testing for all hazardous wastes that ISOCI intends to fuel blend. As drafted, the WAP, in Table  
20 III-4, provides for fingerprint testing for PCBs in all incoming shipments of *used oil*. While this  
21 condition will ensure that ISOCI does not accept used oil with concentrations of PCBs greater  
22 than 50 ppm, it will not ensure that ISOCI does not accept any *wastes* containing PCBs with a  
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25 <sup>2</sup> “Used oil” means “[o]il that has been refined from crude oil, or any synthetic oil, that has been  
26 used, and, as a result of use or as a consequence of extended storage, or spillage, has been  
27 contaminated with physical or chemical impurities.” Cal. Health & Safety Code §  
28 25250.1(a)(1)(A)(i). However, this definition excludes “[o]il that contains polychlorinated  
biphenyls (PCBs) at a concentration of 5 ppm or greater.” *Id.* § 25250.1(a)(1)(C)(iv). In other  
words, used oil, in the statutory sense, must have a PCB concentration of less than 5 ppm. This  
explains the significance of the 5 ppm standard.

1 concentration of 50 ppm or greater, as Special Condition 2.r. requires.<sup>3</sup> The generic information  
2 on PCB concentrations in the waste profiles for hazardous wastes that will be fuel blended cannot  
3 guarantee compliance with Special Condition 2.r. Instead, ISOCI must perform fingerprint  
4 testing on every shipment of incoming hazardous waste that is to be fuel blended. Since ISOCI  
5 will blend these hazardous wastes into fuel mixtures that subsequently will be burned in a boiler  
6 or industrial furnace, it is extremely important for ISOCI to know whether the incoming  
7 hazardous wastes comply with the PCB upper concentration limit of 50 ppm.<sup>4</sup>

8 Finally, Special Condition 2.r. should specify which testing methods can be used  
9 to establish the PCB concentration of wastes accepted and treated at the ISOCI facility. CBE has  
10 repeatedly urged DTSC to require ISOCI to use a more definitive test method than the  
11 immunoassay-based tests proposed. Such tests are typically used to detect PCB contamination in  
12 soil, although they can accept non-aqueous liquid samples.<sup>5</sup> These tests must be carefully  
13 designed to screen for specific types of PCB components, making it difficult to employ them to  
14 get accurate results at sites where blended fuels have been used (and presumably, the same would  
15 apply for sites where fuels are blended). See EPA, *Tools and Techniques for Expediting Site*  
16 *Characterizations* 4-34.<sup>6</sup> Specifically, EPA has stated that

17 [i]mmunoassay test kits should not be used at MGP sites where crude oil was used  
18 as a fuel source because the widely varied composition of feedstocks for oil-fired  
19 plants does not allow correlation to a standard based on simple feedstock.

20 *Id.* For these reasons, Method 4020 is not suited for ISOCI's operations.

21 The other methods proposed in the WAP, 8080, 8250, and 9078, also are

22 <sup>3</sup> Because used oil will arrive at the facility in bulk shipments, it will always be subject to  
23 fingerprint testing. Other PCB-contaminated hazardous wastes, however, might arrive in bulk or  
24 containerized shipments, only 10% of which will be fingerprint tested according to the current  
25 permit terms.

26 <sup>4</sup> Such testing is also necessary to ensure that ISOCI complies with the Toxic Substances Control  
27 Act ("TSCA"), which imposes additional restrictions on hazardous wastes with PCBs at  
28 concentrations exceeding 50 ppm.

29 <sup>5</sup> Method 4020 is described by EPA as being "a procedure for screening soils and *non-aqueous*  
30 *waste liquids* to determine when total polychlorinated biphenyls (PCBs) are present at  
31 concentrations above 5, 10 or 50 mg/kg." EPA, Method 4020 ¶ 1.1 (Dec. 1996) (emphasis  
32 added), at <http://www.epa.gov/sw-846/pdfs/4020.pdf>.

33 <sup>6</sup> <http://www.cluin.org/download/misc/mgp/chap4b.pdf> (Hazardous Waste Clean-Up Information  
34 (CLU-IN) Web Site).

1 inadequate for fingerprint testing waste oils for PCBs. Method 9078 is used to test for PCBs in  
2 *solid* waste. Method 8080, much like Method 4020, is commonly used to test for PCBs in soil.  
3 Finally, Method 8250 is used to test, almost generically, semi-volatile organic compound  
4 parameters – the test is capable of detecting 65 different parameters.

5 As EPA recognized when it established Method 4020 (Screening for PCBs by  
6 Immunoassay), “[i]n cases where the exact concentrations of PCBs are required, quantitative  
7 techniques (i.e., Method 8082) should be used.” EPA, Method 4020 ¶ 1.3 (Dec. 1996).<sup>7</sup> Because  
8 ISOCI will need to differentiate between concentrations as low as 2 ppm and 5 ppm, CBE  
9 contends that ISOCI should utilize this more exact method, or an equivalent. The other methods  
10 proposed in the WAP are not well suited or definitive enough for the operations proposed at the  
11 facility.

12 In sum, DTSC must undertake or require several amendments to the WAP and/or  
13 Special Condition 2.r. to clarify how wastes with various concentrations of PCBs will be  
14 identified and handled.<sup>8</sup> In particular, the Permit must address wastes with concentrations  
15 ranging from 2 – 5 ppm, and fingerprint testing to establish PCB concentrations should be  
16 conducted for all wastes destined for fuel blending, not just all waste oils. Additionally, Method  
17 8082, or its equal, should be used to establish PCB concentrations. Without these amendments,  
18 the terms controlling how to handle solutions containing varying concentrations of PCBs will be  
19 unacceptably vague.

20 4. The WAP does not specify that post-commingling testing of PCBs will cease

21 EPC’s first comment (labeled Comment 3-1 by DTSC) reveals that ISOCI is not  
22 operating consistently with DTSC’s presumptions concerning when PCB fingerprint testing  
23 should occur. Consequently, the Permit should explicitly require ISOCI to test PCB  
24 concentrations before commingling used oil. Specifically, EPC challenged DTSC’s  
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26 <sup>7</sup> <http://www.epa.gov/sw-846/pdfs/4020.pdf>.

27 <sup>8</sup> Because PCBs “above 2 mg/L will not be treated in the oil treatment system” (WAP ex. III-4),  
28 and wastes that have a PCB concentration between 5 and 49 ppm “shall only be managed in the  
Fuel Blending Unit”, Permit Special Condition 2.r., one wonders where wastes that have a PCB  
concentration between 2 and 5 ppm will be processed.

1 characterization of current used oil blending operations. The permit states that “[a]fter inbound  
2 shipments of used oil are fingerprint tested to identify the contents of the shipment, they may be  
3 commingled in the designated receiving Tanks 21, 22, 23, 24, 25, 26, and 27.” (Permit at 6.)  
4 EPC requested that DTSC modify this language “as a matter of policy and consistency with  
5 current ISOCI operations . . . .” In support of this position, EPC selectively cited language from  
6 DTSC’s response to comments in the American Oil Company (USEPA ID No. CAD 981 427  
7 669) permitting process, where “DTSC recognize[d] that it would be difficult to have each  
8 incoming load of used oil tested for PCBs to ensure it does not contain greater than 5 ppm PCBs.”  
9 DTSC, Response to Comments for American Oil Company 15 (Dec. 8, 2006).<sup>9</sup>

10           However, the procedures that DTSC accepted for a *transfer* facility, such as  
11 American Oil’s Van Nuys facility, are not an appropriate model for a *treatment* facility like  
12 ISOCI’s. Indeed, DTSC permits transfer facilities to test for PCBs after commingling used oil in  
13 outgoing tanker trailers in part because “[u]sed oil recycling facilities *such as Industrial*  
14 *Services* . . . are already testing used oil in each incoming truck before it is unloaded into the  
15 tanks.” *Id.* (emphasis added). The different operations at a treatment, as opposed to a transfer,  
16 facility do not require, as EPC suggests, “consistent and equitable” treatment.

17           Fingerprint testing must be completed at ISOCI’s treatment facility before  
18 commingling occurs to avoid generating a larger volume of PCB-impacted oil or improperly  
19 diluting the PCB concentration to below allowable acceptance concentrations. Moreover, if  
20 fingerprint testing for PCBs is not performed on each incoming shipment, then it is not possible  
21 for ISOCI to ensure compliance with the various PCB levels to which they are subject.<sup>10</sup>

22           If shipments of used oil are commingled in a receiving tank without first being  
23 fingerprint tested, shipments containing PCBs at concentrations above 5 ppm (which is not used

24 <sup>9</sup> [http://www.dtsc.ca.gov/HazardousWaste/Projects/upload/AmericanOilCompany\\_ROC.pdf](http://www.dtsc.ca.gov/HazardousWaste/Projects/upload/AmericanOilCompany_ROC.pdf).

25 <sup>10</sup> Special condition 2.r. of the Permit states that wastes which contain PCBs at concentrations  
26 between 5 and 49 ppm may only be managed at the Fuel Blending Unit, and that the facility may  
27 not accept any wastes that have a PCB concentration of 50 ppm or greater. In addition, California  
28 Health & Safety Code § 25250.1(a)(1)(C)(iv) established that waste which might otherwise be  
classified as used oil does not qualify if it “contains polychlorinated biphenyls at a concentration  
of 5 ppm or greater.” Similarly, “recycled oil” includes only a subset of used oil—that which  
contains less than 2 mg/kg of PCBs. California Health & Safety Code § 25250.1(a)(3)(B)(vii).

oil by definition) may be diluted with used oils containing lower concentrations of PCBs. Once the used oils mix and the entire receiving tank contains PCBs at a concentration of less than 2 ppm, ISOCI will be unable to determine that one of the shipments exceeded the 5 ppm regulatory limit for PCBs. This will result in oil that is not used oil being treated as such because used oils with lesser concentrations of PCBs will mask the true nature of shipments with higher concentrations, in violation of the Health and Safety Code. This practice will also violate the facility Permit, which requires that used oils with PCBs at concentrations above 5 ppm may only be treated in the Fuel Blending Unit. (Permit Special Condition 2.r.)

To the extent that the practices described above are indeed the procedures currently used at the facility, the WAP and/or Permit should be modified to ensure that these activities cease. As a treatment facility, ISOCI has a responsibility to confirm that the used oil it treats or blends has an acceptable concentration of PCBs.<sup>11</sup>

C. The WAP and Permit Special Condition 2.q. should require that ISOCI analyze each shipment of bulk waste for the characteristic of reactivity

While the Permit does prohibit the transfer and treatment of wastes that exhibit the characteristic of reactivity, it does not require that incoming wastes be tested for this characteristic. This condition is critical, given that hazardous wastes that exhibit the characteristic of reactivity have the potential to cause explosive and violent reactions and generate toxic gases and vapors in quantities sufficient to present danger to human health or the environment. *See CCR 22 § 66261.23.* Should the facility inadvertently receive a reactive waste shipment, the consequences for the neighboring community could be catastrophic. Therefore, Special Condition 2.q. also should require that incoming wastes be tested for this characteristic of reactivity.

California Code of Regulations title 22, section 66264.13(a) requires that “[b]efore an owner or operator transfers, treats, stores, or disposes of any hazardous waste . . . the owner or

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<sup>11</sup> DTSC’s grant of review for CBE’s permit comment 1-13, which largely addressed the timing of testing for PCBs, also included a request that DTSC amend the Permit to ensure that PCBs are not introduced to or discharged from the facility’s waste water treatment unit. CBE’s additional arguments in support of this requirement are made below, in Part J.

1 operator shall obtain a detailed chemical and physical analysis of a representative sample of the  
2 waste.” This analysis must contain, “[a]t a minimum . . . all the information which must be  
3 known to transfer, treat, store, or dispose of the waste” in accordance with the California  
4 standards for owners and operators of hazardous waste transfer and treatment facilities. *Id.* Since  
5 ISOCI is not permitted to store and/or treat reactive wastes, it must be required to determine, prior  
6 to accepting the waste, whether the particular shipment contains reactive elements.

7 Inexplicably, and at odds with its recognition of the significant dangers that  
8 reactive wastes pose,<sup>12</sup> DTSC failed to include Permit language that requires ISOCI to check  
9 each bulk shipment<sup>13</sup> for the characteristic of reactivity. Including such language would guard  
10 against ISOCI inadvertently receiving reactive wastes and provide safety to the community. It  
11 would also increase the likelihood that the facility could comply with its other permit provisions.  
12 In addition, such a condition would be consistent with DTSC regulations that require owners and  
13 operators to obtain a detailed chemical and physical analysis of a representative sample of waste  
14 *before its transfer, treatment, storage or disposal.* CCR 22 § 66264.13(a)(1) (emphasis added).

15 Furthermore, a condition that requires the facility to inspect each bulk shipment for  
16 the characteristic of reactivity is consistent with EPA’s April 1994 guidance manual titled “Waste  
17 Analysis at Facilities that Generate, Treat, Store, and Dispose Of Hazardous Waste” (hereinafter  
18 EPA Waste Analysis Manual), which DTSC claims to have followed when evaluating ISOCI’s  
19 waste analysis plan. Specifically, that document states that:

20 regulatory requirements and good management practices dictate that  
21 incompatible (e.g., ignitable, reactive) . . . wastes be identified *prior*  
22 to waste management . . . . If combined, incompatible wastes are  
23 capable of spontaneous combustion, toxic gas generation, or  
24 explosions. Furthermore, accepting wastestreams inappropriate for  
25 your facility operations may violate permit conditions.

26 EPA Waste Analysis Manual at 2-10 (OSWER 9938.4-03 Apr. 1994) (emphasis added). If DTSC  
27 is truly following these guidelines, then it must amend the Permit to include a condition that

28 <sup>12</sup> See CCR 22, §§ 66264.23, 66264.17.

<sup>13</sup> Bulk shipments are those transported in “Bulk containers” which are defined as “any container or container-like vehicle...with a capacity greater than 119 gallons (450 liters), which is used to transport hazardous waste(s) . . . .” CCR 22, § 66260.10.

1 requires the facility to check each bulk shipment for the characteristic of reactivity.

- 2 D. The Permit must include conditions that require each container of waste codes  
3 F007-F011 to be analyzed for the characteristic of reactivity

4 The Permit allows the facility to accept wastes that fall into RCRA listed waste  
5 codes F007, F008, F009, F010 and F011, which include cyanide-containing wastes, most of  
6 which are reactive. Yet, DTSC proposes to allow the facility to rely on a mere 10% sampling  
7 frequency to ensure that it does not take in reactive wastes. For shipments of F007 through F011  
8 in particular, given the greater likelihood that they will contain reactive elements, this  
9 representative sampling is not sufficient.

10 Therefore, for shipments of F007 through F011 wastes arriving at the facility,  
11 DTSC must require all containers to be sampled and analyzed to ensure that none exhibit the  
12 characteristic of reactivity. As with the bulk shipments discussed in Part II.B.C, inclusion of a  
13 permit condition requiring analysis of each container is consistent with California Code of  
14 Regulations title 22, § 66264.13(a)(1) and the EPA Waste Analysis Manual that DTSC allegedly  
15 relied upon when evaluating ISOCI's WAP and formulating permit conditions.

16 Additionally, ISOCI must revise WAP Table III-1 ("Characteristics of Accepted  
17 Wastes") to specify that the characteristic of reactivity is not acceptable in hazardous wastes F007  
18 through F011. Special Condition 2.q. in the Permit states that ISOCI "shall not accept any waste  
19 that exhibits the characteristic of reactivity." However, Table III-1 of the WAP lists both toxicity  
20 and reactivity as characteristics of hazardous wastes F007, F008, F009, F010 and F011. While  
21 these hazardous wastes may be accepted at the facility, they may only be accepted if they do not  
22 exhibit the characteristic of reactivity. Therefore, Table III-1 must be revised.

- 23 E. The Permit must describe the operations to be conducted in the truck  
24 loading/unloading and storage areas and provide for secondary containment

25 California Health & Safety Code § 25200.19(c)(4) requires that "loading and  
26 unloading of bulk hazardous waste shall be conducted within the hazardous waste facility with a  
27 containment device or system capable of collecting and containing leaks and spills that may be  
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1 reasonably anticipated to occur . . . until the leaked or spilled material is removed . . . .” The  
2 truck loading and unloading areas at ISOCI have containment capacities ranging from 1,500 to  
3 2,500 gallons. This capacity is *per se* inadequate to contain a release from trucks that typically  
4 have a capacity in the 5,000 gallon to 10,000 gallon range.

5 In its response to these comments, DTSC interpreted § 25200.19 to only require  
6 that a containment device control leaks and spills that may be “reasonably anticipated” to occur  
7 during loading and unloading operations until the leaked or spilled material is removed. DTSC  
8 concluded that the 1,500 to 2,500 gallon containment capacities are sufficient to contain spills  
9 that may occur during the *short-term transfer process* (emphasis added).

10 However, since the Permit fails to describe loading/unloading operations in detail,  
11 and absent any explanation from DTSC regarding how or why it concluded that the transfer  
12 process will be short term, its conclusion is unreasonable. ISOCI’s facility, with a relatively  
13 small 2.2 acre footprint, proposes to stage and manage 100 trucks per day. Before accepting each  
14 shipment ISOCI must, at minimum, conduct a visual inspection of each waste shipment to ensure  
15 that the shipment is consistent with the manifest, waste profile and LDR notification; and sample  
16 and perform laboratory analysis on each waste. CCR 22 § 66264.13; EPA, *Waste Analysis at*  
17 *Facilities That Generate, Treat, Store, And Dispose of Hazardous Waste: A Guidance Manual* §  
18 1.4.1 (Aug. 1994). Then, if the waste passes inspection and the analytical results are consistent  
19 with the waste profile, ISOCI can permit the waste to be unloaded. ISOCI has conceded that in  
20 some cases, a truck may await unloading for up to 24-hours. In addition, trucks arriving late on a  
21 Friday or the day before a holiday could await processing for periods longer than 24-hours. The  
22 trucks are not necessarily engaged in a short-term transfer process and the permit application  
23 contains no information describing where these unloaded trucks might be staged while awaiting  
24 acceptance.

25 Thus, even if arguendo CCR 22 § 25200.19 did allow a facility to provide  
26 containment for significantly less than a single truckload, the scant evidence in the permit  
27 application does not support DTSC’s conclusion that trucks will require containment only during  
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1 a short-term transfer process. Instead, on many occasions, several of the 100 trucks that the  
2 facility plans to receive daily, will likely sit somewhere on the property for 24-hours or more.  
3 While idle, the truck could be the source of a release due to a small gasket leak or a catastrophic  
4 failure caused by an intentional act of terror or vandalism. Regardless of the cause, a truck  
5 parked and awaiting unloading on the facility premises could release significantly more than  
6 1,500 to 2,500 gallons of hazardous waste.

7 To ensure ISOCI's proper staging of vehicles awaiting unloading and to support  
8 DTSC's conclusion that the facility has sufficient containment to meet the statutory requirement,  
9 DTSC must clarify in the Permit exactly what waste management activities will take place in the  
10 truck loading, unloading, storage and staging areas described in the Part B application, and any  
11 areas improperly omitted from the application. Should DTSC propose to permit ISOCI to stage  
12 vehicles for up to 24-hours or more in facility areas equipped with containment, DTSC must  
13 require additional secondary containment. Alternatively, should DTSC propose to permit ISOCI  
14 to stage loaded vehicles for up to 24-hours or more in facility areas not equipped with  
15 containment, DTSC must explain why this should be permitted and how it is consistent with  
16 California statutes. If DTSC instead intends to prohibit the staging of loaded vehicles outside of  
17 containment areas, then the Permit must proscribe such activities. Anything less deprives  
18 community stakeholders of the opportunity to assess the proposed permit and exposes the  
19 neighboring community to the threat of uncontrolled releases.

20 F. The Permit must be amended to include conditions specifying that ISOCI will  
21 evaluate waste compatibility and group wastes according to this evaluation

22 In its application, ISOCI indicates that closed or covered containers will be stored in either  
23 the container storage areas or located in truck or rail vehicles for transport and disposal offsite.”  
24 (Permit § VIII.F.2.). But the application does not indicate *that* or *how* the *containers* will be  
25 separated from one another. The fact that incompatible wastes are in separate, sealed containers  
26 does not alone satisfy the requirements in sections 66264.177(c) and 66270.15(b). California  
27 Code of Regulations title 22, section 66264.177(c) requires that a “container holding a hazardous  
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1 waste that is incompatible with any waste or other materials transferred or stored nearby in other  
2 containers . . . shall be separated from the other materials or protected from them by means of a  
3 dike, berm, wall, or other device.” Moreover, section 66270.15(b) requires that an applicant  
4 include in its Part B Permit application “sketches, drawings, or data demonstrating compliance  
5 with . . . section 66264.177(c) . . . .” ISOCI did not provide sketches, drawings or data  
6 demonstrating compliance. Therefore, ISOCI still must comply with the requirements set forth  
7 sections 66264.177(c) and 66270.15(b) by indicating how the containers will be separated from  
8 one another and by providing sketches, drawings or data that demonstrate compliance with  
9 subsection c.

10 Of course, the real first step to ensuring that containers containing incompatible  
11 wastes are separated is for ISOCI to test the wastes as they arrive at the facility. To comply with  
12 66264.177’s segregation requirement, ISOCI must routinely test and analyze incoming wastes.  
13 Moreover, DTSC should require electronic record keeping to ensure, in real time, that  
14 incompatible wastes are stored separately. *See* CCR 22 § 66264.73. DTSC is certainly not  
15 prohibited from imposing such conditions and given the volume, nature, and diversity of the  
16 wastes that ISOCI proposes to handle, CBE believes that these conditions are necessary to protect  
17 human health and the environment. Should DTSC disagree with these conditions, ISOCI is  
18 required, at the very least, to amend its Part B application to describe an alternative program for  
19 ensuring the segregation of incompatible wastes.

20 G. The Part B Permit application must include additional provisions describing how  
21 staging will take place

22 Staging, the practice of temporarily placing hazardous waste containers outside of  
23 permitted areas while the contents are screened or sampled, is common in the hazardous waste  
24 handling business. However, ISOCI’s Part B Permit application does not describe any staging  
25 areas at the facility. CBE wonders whether this is because, as DTSC has stated “[t]here will be  
26 no staging areas at ISOCI”, or if staging activities were simply omitted from the description of  
27 current and/or planned operations. If, indeed, no staging activities will take place at ISOCI, then  
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1 a special permit condition stating so seems reasonable. On the other hand, if ISOCI intends to  
2 conduct staging activities in any way for any duration, the Permit must be amended to provide a  
3 description of these activities.

4 H. DTSC must amend the Permit to require more frequent tank inspections by a  
5 registered engineer

6 CBE urges DTSC to require more frequent inspections, given the quantities and  
7 types of hazardous wastes, including wastes containing cyanides that will be stored at the facility.  
8 Assessments are “valid for a maximum period of five (5) years or the remaining service life of the  
9 tank system, as stated in the engineer’s assessment, whichever is less.” CCR 22 §  
10 66264.192(i)(1). By including the phrase “maximum period”, the regulations leave open the  
11 possibility that a period that the department sets, as opposed to the remaining service life of the  
12 tank system, could be less than five years. If this phrase does not provide this discretion, then it  
13 becomes a superfluous phrase, as the regulation could just as easily, in fewer words, make  
14 assessments valid for five years or for the remaining service life of the tank system, whichever is  
15 less. Thus, the language should instead be read to merely establish a ceiling on the interval  
16 between inspections, leaving the door open for DTSC to impose something more likely to  
17 preserve human health. Consistent with this interpretation, CBE suggests that a three year  
18 interval for inspections, as provided in other permits for hazardous waste facilities in California,  
19 should be imposed.

20 I. ISOCI must amend its Closure Plan to provide missing details and correct  
21 discrepancies

22 CBE commented that the closure plan was inadequate because (1) it failed to list  
23 all of the facilities that might handle wastes sent off-site during closure and (2) the assumptions in  
24 the plan regarding the volume of each storage tank taken up by sludge at the time of closure did  
25 not match the assumptions used when calculating closing costs. CBE once again submits that the  
26 closure plan proposed by ISOCI must be amended to correct these deficiencies.

27 First, the plan failed to list all of the facilities that might handle wastes sent off-site  
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1 during closure. The facilities listed in the closure plan as potential recipients of ISOCI waste at  
2 the time of closure are not permitted to accept all of the types of wastes that might be on-site at  
3 that time. As part of its closure plan, ISOCI is required to describe in detail the “methods for  
4 removing, transporting, treating, storing, or disposing of all hazardous wastes,” and to identify  
5 “the type(s) of the off-site hazardous waste management units to be used, if applicable . . . .”  
6 CCR 22 § 66264.112(b)(3); *see also* DTSC, Permit Writer Manual for Closure of Storage &  
7 Treatment Facilities § 3.5 at 1 (Oct. 2002) (“The closure plan should include a *detailed*  
8 description of how the owner or operator will handle all hazardous wastes during final closure.”  
9 (emphasis added)).<sup>14</sup> Specifically, if the remaining waste will be shipped off-site to other  
10 hazardous waste treatment, storage or disposal facilities, the applicant must provide, among other  
11 things, (1) “[a] description of treatment or disposal methods at the final hazardous waste  
12 management facility to support the closure cost estimate;” and (2) “[a]n estimate of the distance  
13 to the final hazardous waste management facility . . . .” *Id.*

14           Implicit in these requirements is that applicants identify in their closure plans all of  
15 the facilities that will receive their wastes upon closure.<sup>15</sup> While the regulations might allow an  
16 applicant to provide a portfolio of hazardous waste facilities, that is not what ISOCI has done.  
17 *See id.* (noting that closure plan provisions for off-site disposal must provide “[p]rocedures the  
18 owner or operator will use to determine if the final hazardous waste management facility is  
19 permitted to accept the wastes generated from the closure activities”). Rather, ISOCI has  
20 proposed to use a DeMenno/Kerdoon facility authorized to accept only used oil, oily wastes,  
21 antifreeze, and other D-code wastes and a U.S. Filter facility that is not authorized to accept  
22 several of the RCRA F, K, and U-listed wastes that ISOCI will handle. Hence, ISOCI has failed  
23 to provide an off-site or on-site disposal plan for a significant segment of the wastes it will be  
24 accepting under the Permit as drafted. *See* ISOCI Part B Permit Application Section XI at 4  
25 (Closure Plan) (stating off-site transport would remove the waste). Therefore, DTSC must

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27 <sup>14</sup> [http://www.dtsc.ca.gov/HazardousWaste/Permits/upload/HWM\\_POL\\_PermitsWriterInstructions\\_Closure\\_ch3\\_5.pdf](http://www.dtsc.ca.gov/HazardousWaste/Permits/upload/HWM_POL_PermitsWriterInstructions_Closure_ch3_5.pdf)

28 <sup>15</sup> One cannot estimate the distance to the final waste management facility unless one knows which facilities will be used to process closure wastes.

1 require ISOCI to amend its closure plan to specify which facilities will receive specific wastes  
2 and the methods to be used at the final hazardous waste management facility to dispose of each  
3 waste.

4 In response to CBE's comment that the closure plan is inconsistent with the  
5 closure cost estimates for removing sludge from tanks, DTSC has responded that "the Closure  
6 Plan in the Part B Permit application (provided by the facility) and the assumptions used to  
7 prepare the Closure Cost Estimate in the Hazardous Waste Facility permit (provided by DTSC)  
8 are not required to match." DTSC, Response to Comments for a Hazardous Waste Part B  
9 Facility Permit and Environmental Impact Report for Industrial Service Oil Company,  
10 Incorporated Response 4-40 (Dec. 18, 2006). However, EPA's guidance on cost estimates plainly  
11 states that "closure and post-closure cost estimates must be *based on* activities described in the  
12 closure and post-closure plans . . . ." EPA, *RCRA Guidance Manual for Subpart G Closure and*  
13 *Post-Closure Care Standards and Subpart H Cost Estimating Requirements* 4.2.1 (OSWER  
14 Policy Directive #9476.00-5 Jan. 1987). In other words, cost estimates must correspond to the  
15 activities and obligations established in the plan.

16 Moreover, given that DTSC, in calculating the closure cost estimate, assumed that  
17 10% of tank volume would consist of sludge at the time of closing, compared to ISOCI's 3%  
18 assumption, CBE fails to see how ISOCI's estimate can satisfy the requirement that the applicant  
19 base its plan on the maximum inventory of hazardous waste, including residues in all treatment  
20 systems. DTSC, Permit Writer Manual for Closure of Storage & Treatment Facilities § 3.6 at 1  
21 (Oct. 2002).<sup>16</sup> By assuming a 3% sludge content in tanks, ISOCI underestimated the maximum  
22 inventory of hazardous wastes for permit closure purposes. DTSC, therefore, should require  
23 ISOCI to amend its Part B application and closure plan to estimate that upon closure, 10% of tank  
24 volume will consist of sludge.

25 In addition to CBE's comments on the closure cost estimates, the Order further  
26 granted review on EPC's comment alleging that the closure cost estimate that DTSC established

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28 <sup>16</sup> [http://www.dtsc.ca.gov/HazardousWaste/Permits/upload/HWM\\_POL\\_PermitWriterInstructions\\_Closure\\_ch3\\_6.pdf](http://www.dtsc.ca.gov/HazardousWaste/Permits/upload/HWM_POL_PermitWriterInstructions_Closure_ch3_6.pdf).

1 using the CostPro software erroneously inflated the true cost of closure. EPC asserted that the  
2 cost was legitimately established by “actual labor, material, analytical, supply, and engineering  
3 quotes that were obtained by ISOCI as the owner and operator of the Facility.” Letter from Anu  
4 Sood, Principal, EPC to Watson Gin, Deputy Director, DTSC HWMP (Mar. 5, 2007). EPC  
5 accused DTSC of erroneously applying California Code Regulations tit. 22, § 66264.142, based  
6 on the fact that DTSC imposed its own cost estimate, despite language in subsection (a)(2) which  
7 states that the “estimate shall be based on the costs to the owner or operator of hiring a third party  
8 to close the facility.”

9 However, EPC, not DTSC, appears to be the party that misapplied California Code  
10 of Regulations title 22, § 66264.142(a)(2). In reality, this section only describes the extent of an  
11 *applicant’s* obligation to provide a closure cost estimate. The actual selection of an estimate for  
12 inclusion in the Permit is within the province of DTSC and need not be based on lowest bid that  
13 an applicant is able to secure from a vendor. *See* DTSC, PowerPoint Slides from Oct. 17, 2005  
14 Financial Assurance Workshop (Oct. 14, 2005).<sup>17</sup>

15 Moreover, DTSC’s reliance on the CostPro software was entirely proper. As EPA  
16 recently explained, “CostPro has been used by EPA and state regulators since 1996 to evaluate  
17 facility owners’ and operators’ estimates for closure and pose-closure. RACER [, the software  
18 that EPC argues should have been used in this case,] is primarily used for corrective action,  
19 although it can be adapted for closure and post-closure purposes.” Memorandum from Matthew  
20 Hale, Director, EPA Office of Solid Waste to RCRA Waste Management Directors Regions 1-10  
21 at 2 n.14 (Jan. 30, 2007). For application in California, DTSC has taken steps to ensure that  
22 generic pricing values used in the CostPro program are consistent with the instate market for  
23 disposal costs, installation of closure covers, and the like. DTSC, Financial Assurance Frequently  
24 Asked Questions 6-8.<sup>18</sup> Accordingly, EPC’s assertions that DTSC’s reliance on CostPro was

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26 <sup>17</sup> *See* [http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/HWMP\\_WS\\_FR\\_Slides.pdf](http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/HWMP_WS_FR_Slides.pdf) (slides  
27 of Raymond Leclerc, P.E., DTSC, explaining that DTSC will develop its own independent cost  
28 estimate, compare this estimate to that of the applicant, attempt to resolve discrepancies with the  
applicant, and, “if facility is unwilling to revise the facility estimate to address DTSC concerns”,  
“DTSC will move forward with DTSC derived estimate”).

<sup>18</sup> *See* <http://www.dtsc.ca.gov/loader.cfm?url=/commonspot/security/getfile.cfm&pageid=93345>.

1 inconsistent with past practices and that its resulting analysis was not site-specific are without  
2 foundation.

3 J. DTSC must amend the Permit to explicitly provide conditions regulating the waste  
4 water treatment system to protect human health and the environment

5 In its petition for review, CBE expressed concern regarding two aspects of the  
6 permitted waste water treatment system (“WWTS”). First, CBE noted that language describing  
7 the waste water, which will include “Waste Waters from ISOCI treatment of oil containing liquid  
8 wastes, aqueous liquids from off-site and on-site washing and rinsing activities, and inorganic off-  
9 site Waste Waters Containing less than 1% metals” could be read to permit the discharge of PCBs  
10 because the “oil containing liquid wastes” might contain, among other things, PCBs. Second,  
11 CBE noted that, given the scope and nature of the permitted waste water treatment operations,  
12 ISOCI might be subject to the pretreatment standards applicable to waste water resulting from the  
13 treatment oil and oily wastes. Specifically, CBE suggested that ISOCI’s waste water treatment  
14 facility should be regulated as a centralized waste treatment (“CWT”) facility.

15 In response to CBE’s first point, DTSC countered that the provisions limiting the  
16 waste codes that the WWTS is authorized to handle are sufficient to prevent the discharge of  
17 PCBs into the WWTS and into the environment. But by permitting the discharge of waste water  
18 associated with “waste oil and mixed oil”, CWC #221, and unspecified oil-containing waste,  
19 CWC #223, the provisions in the Permit make it likely that ISOCI will, perhaps mistakenly, assert  
20 that it can discharge waste water resulting from treatment of all of its oil wastes, including those  
21 wastes that contain PCBs. DTSC must amend the WWTS description to remove provisions that  
22 appear to provide contradictory terms applicable to the discharge of PCBs in waste water.

23 Regarding CBE’s second point, because ISOCI will treat “for disposal, recycling  
24 or recovery of material” hazardous industrial wastes received from off-site, CBE contends that its  
25 WWTS is actually a CWT facility, subject to 40 C.F.R. §§ 437.20-.26. These regulations  
26 provide, *inter alia*, a set of pretreatment standards that should be incorporated into ISOCI’s  
27 permit. Even if DTSC is not, as it contends, a “control authority” authorized to enforce these  
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1 pretreatment requirements, *see id.* § 437.20, this does not prevent it from imposing the same  
2 conditions in its hazardous waste facility permit. *See* DTSC, Response to Comments for a  
3 Hazardous Waste Part B Facility Permit and Environmental Impact Report for Industrial Service  
4 Oil Company, Incorporated Response 4-24 (Dec. 18, 2006) (responding that “[t]he regulatory  
5 authority for 40 CFR, 437.20, et. seq. is the City of Los Angeles Bureau of Sanitation”). DTSC’s  
6 own regulations provide that a “wastewater treatment unit” is a device that “is part of a  
7 wastewater treatment facility which is subject to regulation under either section 402 (33 U.S.C.  
8 section 1317) or 307(b) (33 U.S.C. section 1342) of the Federal Clean Water Act.” CCR 22 §  
9 66260.10. Consequently, CBE finds nothing improper in a request that DTSC amend the Permit  
10 to specifically require ISOCI to comply with any applicable pretreatment standards established by  
11 Clean Water Act regulations. The fact that the General Conditions in Part III of the Permit state  
12 that “[t]he issuance of this Permit by DTSC does not release the Permittee from any liability or  
13 duty imposed by federal or state statutes or regulations or local ordinances” is hardly sufficient to  
14 ensure that ISOCI will comply with applicable pretreatment standards in operating its WWTS.

15 K. The Order erroneously failed to grant review on additional comments

16 DTSC repeatedly dismissed comments because they allegedly did not “request  
17 review of a specific condition of the permit.” However, in at least one instance, CBE sought  
18 review of the *lack* of a specific condition.

19 For example, in comment 1-14, CBE objected to the Permit’s failure to require  
20 dioxin testing. DTSC has responded previously that the facility is not authorized to accept  
21 dioxin-containing wastes and has concluded from this fact that testing for dioxins is not  
22 necessary. However, ISOCI cannot know that it is not accepting dioxins if it never tests for them.  
23 Because ISOCI will create blended fuels from the wastes it receives and these fuels will be  
24 burned at a variety of locations, dioxins, if present, will have the opportunity to travel far and  
25 wide. Given the expansive reach of ISOCI’s operations, it should be obligated to test for dioxins.

26 Similarly, CBE believes that DTSC erred when it dismissed CBE’s comment that  
27 ISOCI should be required to list in its Part B application every piece of equipment that will be  
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1 used to handle hazardous waste. California Code of Regulations tit. 22, § 66264.112(b)(4)  
2 requires a *detailed* description of the equipment so that it can be properly decontaminated upon  
3 closure. As noted in CBE's prior comments, if pieces of equipment used to handle hazardous  
4 waste are left out of the Permit B application, then either the equipment will not be properly  
5 decontaminated, or the closure plan costs estimates will be inadequate to cover additional clean  
6 up procedures. Perhaps in recognition of this fact, DTSC's permit writer instructions note that in  
7 a closure plan, "[t]he owner or operator should provide a list of *all equipment*, structures, and  
8 buildings that will require decontamination or off-site disposal during final closure." DTSC,  
9 Permit Writer Manual for Closure of Storage & Treatment Facilities § 3.6 at 1 (Oct. 2002)  
10 (emphasis added).<sup>19</sup> CBE again urges DTSC to require that ISOCI list every piece of equipment  
11 that will come in contact with hazardous waste.

12 L. ISOCI's request for more lenient conditions should be denied

13 In addition to granting review on several of CBE's comments, the Order granted  
14 review on EPC's comment that DTSC should remove Special Condition 2.u. in the Final Permit.  
15 This condition prohibits ISOCI from starting "construction of any proposed hazardous waste units  
16 until it obtains all permits required by all state and local regulatory agencies" and further provides  
17 that "the permit for the proposed units shall not become effective until the applicant is granted a  
18 local land use permit." EPC contends that DTSC overstepped the bounds of its jurisdiction when  
19 it imposed a "land use condition." However, based on the plain language of the statutory  
20 provision that DTSC cited to support this condition, its inclusion was entirely proper. California  
21 Health & Safety Code § 25199.3(a) limits a state agency's ability to "refuse to issue a permit for a  
22 hazardous waste facility project on the grounds that the applicant has not been granted a land use  
23 permit", but explicitly states "that the state agency may provide that the permit shall not become  
24 effective until the applicant is granted a local land use permit." *Id.* Plainly, DTSC's imposition  
25 of Special Condition 2.u. was within the scope of its jurisdiction.

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27 <sup>19</sup> See [http://www.dtsc.ca.gov/HazardousWaste/Permits/upload/HWM\\_POL\\_](http://www.dtsc.ca.gov/HazardousWaste/Permits/upload/HWM_POL_PermitWriterInstructions_Closure_ch3_6.pdf)  
28 [PermitWriterInstructions\\_Closure\\_ch3\\_6.pdf](http://www.dtsc.ca.gov/HazardousWaste/Permits/upload/HWM_POL_PermitWriterInstructions_Closure_ch3_6.pdf) (specifically listing as examples of items to include  
"equipment used in waste handling . . . (e.g., forklifts, drum dollies, pallets, drip pans, hand  
pumps, spill absorbent, booms, shovels)").

1 Similarly, for the reasons already provided above, EPC's comment requesting a  
2 lower closure cost estimate should be denied. EPC's argument is based on a gross misreading of  
3 the law. DTSC sets the final closure cost estimate, which establishes the financial assurance  
4 obligations of a permit applicant, at its discretion after comparing the Department's cost estimate  
5 using the CostPro software with the applicant's estimate. Since DTSC followed these procedures,  
6 EPC, on behalf of ISOCI, has no grounds to appeal the resulting terms.

7 Likewise, for the reasons set forth in Part B.4, DTSC should deny EPC's proposal  
8 allowing ISOCI to fingerprint test for PCBs after wastes are commingled. DTSC has allowed  
9 used oil transporters to test PCB concentrations of the oil mixtures resulting from truck to truck  
10 transfers (in other words, after the wastes have been commingled), however this practice is  
11 permitted in light of the fact that used oil treatment facilities test the loads before handling them.  
12 In contrast, treatment facilities that will send treated and blended used oil out for public  
13 consumption have a greater responsibility to ensure that the inputs in this process meet certain  
14 statutory requirements. ISOCI must be required to comply with PCB fingerprint testing  
15 requirements as set forth in the Permit.

16 Finally, EPC's request that DTSC modify Special Condition 2.f. to weaken annual  
17 analysis requirements should be denied. Currently, the Permit requires that "[a]ll waste profiles .  
18 . . be analyzed by a California Environmental Lab Accreditation Program (ELAP) certified  
19 laboratory on an annual basis." EPC would prefer a requirement that imposes an annual "review"  
20 of waste profiles and analysis as needed "where there is a concern or knowledge of any changes  
21 in the waste stream or the underlying waste-generating processes." EPC erroneously cites the  
22 American Oil Company Permit and EPA's Waste Analysis guidance to justify its position.

23 However, the American Oil permit is an inappropriate model for ISOCI.  
24 American Oil is "a hazardous waste transporter [that] collects used oil and oil contaminated solid  
25 waste from offsite generators (gas stations, oil changers, auto repair shops, etc.) and consolidates  
26 these wastes before shipping them to a hazardous waste treatment or disposal facility". By  
27 contrast, ISOCI is a waste handling and treatment operation that proposes to significantly expand  
28

1 the types of waste that it handles and treats beyond oil. American Oil simply does not handle the  
2 volume or variety of wastes that ISOCI intends to manage and does not actually treat any wastes.

3 EPC's request that the Permit require the bare minimum frequency of analysis is  
4 inappropriate. EPA guidance documents cited by EPC note that, "waste analysis must be  
5 repeated as often as necessary to ensure that it is accurate and up to date." *See also* CCR 22 §  
6 66264.13(a)(4). Given that ISOCI currently is not required to independently test all incoming  
7 waste shipments, annual waste profiling by certified technicians is a critical check on the integrity  
8 of ISOCI's operations. Moreover, again as stated in EPA's guidance documents,

9 [o]ff-site TSDFs will want to be particularly thorough in developing a schedule for  
10 re-evaluating wastes that will (1) confirm that the information provided by the  
11 generator is correct, and (2) detect any changes in the waste properties while  
12 managing the waste. When receiving wastes from off-site generators, conducting  
13 corroborative testing and or analysis will provide added protection.

14 *See EPA, Methods for Chemical Analysis of Water and Wastes* (Doc. No. 600/4-79-020), at 2-44  
15 (Mar. 1983). Thus, DTSC should deny the proposed changes to limit the frequency of waste  
16 profiling.

17 Many of ISOCI's permit conditions fall short in ensuring public health and safety. Thus  
18 relaxing conditions in the Permit is the wrong course of action. Accordingly, CBE urges DTSC  
19 to deny EPC's proposed changes.

20 **III. DTSC MUST AMEND THE PERMIT AND REQUIRE THAT ISOCI AMEND ITS**  
21 **PART B PERMIT APPLICATION IN ACCORDANCE WITH CBE'S COMMENTS**

22 For the reasons provided above, DTSC and ISOCI must amend, respectively, the  
23 Permit and the Part B Permit application (and its components, such as the WAP) to accomplish  
24 the following: (1) impose secondary containment and inspection requirements for long-term rail  
25 car storage; (2) provide in the WAP (a) specific, frequent, pre-transfer fingerprint testing  
26 procedures adequate to ensure that ISOCI does not accept reactive wastes or commingle  
27 incompatible wastes; (b) more detail about the training programs for employees; (c) clear  
28 expectations on how wastes containing PCBs in various concentrations will be processed; and (d)  
clear requirements to analyze PCB concentrations in wastes received before accepting them; (3)

provide a condition in the Permit that requires ISOCI to analyze each shipment of bulk waste for the characteristic of reactivity; (4) provide a condition in the Permit that requires ISOCI to analyze each container containing cyanide wastes for the characteristic of reactivity and further amend the Permit to clarify that while typically reactive waste codes F007 through F011 may be accepted, these wastes cannot be of the reactive variety; (5) provide in the permit a more detailed description of truck loading, unloading, and staging activities and conditions establishing the appropriate level of secondary containment for these areas; (6) include conditions in the Permit specifying that ISOCI will (a) evaluate waste compatibility and (b) group wastes according to this evaluation; (7) include in the Part B Permit application a description of how staging activities related to testing and the like will be conducted (or specify explicitly that none will be conducted); (8) provide in the Permit a requirement that a registered engineer conduct tank inspections every three years; (9) provide missing details and correct inconsistencies in the closure plan; and (10) provide conditions in the Permit regulating the waste water treatment system to protect human health and the environment. Additionally, DTSC should deny EPC's requests, on behalf of ISOCI, for more lenient Permit conditions (comments 3-1 through 3-4).

ADRIENNE L. BLOCH  
COMMUNITIES FOR A BETTER ENVIRONMENT

JANE WILLIAMS  
CALIFORNIA COMMUNITIES AGAINST TOXICS

By: //original signed by//

ADRIENNE L. BLOCH

## **Attachment A**



*Photograph by Kiyoshi Ota/Reuters*

This car derailed at the Kashiwazaki train station in Japan on July 16, 2007 after a 6.6 magnitude quake struck the region. See <http://news.nationalgeographic.com/news/2007/07/photogalleries/japan-earthquake/photo4.html>.

## **Attachment B**

9483.1989(06)

OPERATED TO CONTAIN, DEFINITION

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

NOV 30 1989

Mr. Al Patton  
Environmental Specialist  
C-K Associates, Inc.  
11200 Industriplex Boulevard  
Suite 150  
Baton Rouge, Louisiana 70809

Dear Mr. Patton:

Thank you for your letter of October 30, 1989, requesting EPA interpretation of the phrase "operated to contain" as found in the 40 CFR 264.193 and 265.193 secondary containment requirements for hazardous waste tank systems. We appreciate your obvious work in developing the example assessment document that was enclosed with your letter. This document focuses on the concept of using auxiliary equipment or procedures, such as a sump and pump arrangement that operates on a continuous basis to remove accumulated liquids, as the means of achieving full secondary containment. You are seeking EPA concurrence that such a system fully meets the intent of the regulations.

As you are aware, the primary intent of the hazardous waste tank system standards is to prevent the migration of hazardous waste or accumulated liquid into the environment. Secondary containment is a critical component of a tank system management plan for achieving protection of the environment. As such, EPA places a strong emphasis on the need for properly designed, operated, and maintained secondary containment systems. At the same time, it is EPA's intent to be flexible and not needlessly limit the design and operation parameters of secondary containment systems. Conceivably there is no room for employing both design and operation controls so that complete containment (no releases into the environment) is achieved. However, any system that uses operation controls as a partial substitute for standard secondary containment (barriers) will be closely scrutinized to ensure that the level of environmental protection afforded by barriers is not compromised.

EPA believes that a secondary containment system that is designed to hold 100% of the volume of the largest hazardous waste tank within its boundary, as well as the volume of precipitation from a 25-year, 24-hour storm (is applicable), will provide the most reliable and fail-safe means of protecting the environment from hazardous waste spills, leaks, or accumulated liquids. In the example that you provided, the curbed area

RO 13341



(using a 12 inch high curb) around the 9700 gallon tank, although of sufficient capacity to adequately contain the full contents of the tank, would not be sufficient to likewise contain the volume of precipitation from the 25-year, 24-hour storm (in this case, twelve inches of precipitation). For this, situation, however, increasing the height of the curb to 18 inches would provide the volume of secondary containment needed. We recommend, wherever feasible, that the secondary containment be designed so that it is capable of holding the entire volume of precipitation expected from a 25-year, 24-hour storm, in addition to the volume of the largest tank within its boundaries. EPA believes that the risk or release to the environment is much less when a full barrier is used, as opposed to relying on a downsized barrier operated in conjunction with pumps. The chances of a mechanical device (pump) malfunctioning are significantly greater than with a passive measure, i.e., a barrier. Examples of failure that may be associated with pumps are loss of power and clogging. As such, the owner/operator would need to address protective measures, such as backup power availability and redundant pumps.

Although EPA has strong concerns about using operational controls, e.g., pumps, as a means of achieving complete secondary containment for hazardous waste tank systems, we believe that certain situations may warrant their use. In locations where, for example, space considerations restrict the area available for constructing an adequately sized secondary containment structure or make retrofitting infeasible, operational controls may be appropriate. Where operational controls are employed, EPA believes that the burden of demonstrating their adequacy is placed upon the facility owner/operator. It is the responsibility of the facility owner/operator to demonstrate that the system being proposed as an alternative means of secondary containment does not increase the risk of a release of hazardous waste or hazardous constituents into the environment above that expected from a system using a passive secondary containment barrier. The acceptability of operational controls as part of a secondary containment system should be determined on a case by case basis, with the appropriate EPA Region/State authority making the decision regarding the adequacy and reliability of such a system; I do not believe that your proposed use of operational controls (rather than passive ones) is acceptable as a generic demonstration of compliance with the secondary containment standards.

RO 13341

-3-

If you have any further questions on this issue or regarding other requirements for the proper management of hazardous waste tank systems, please call Mr. Les Otte or Mr. Bill Kline of my staff at (202) 475-8860 or 475-9614, respectively.

Sincerely,

Original Document signed

Sylvia K. Lowrance, Director  
Office of Solid Waste

cc: Chester Oszman  
Bill Kline  
Les Otte

RO 13341